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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H 2007 575

13 OSCAR ALEXIS CRUZ

11023 Luddington Street

14 Sun Valley, California 91352

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs (Board).

22 2. On or about September 18, 2007, the Board received an application for a
23 Respiratory Care Practitioner License from Oscar Alexis Cruz (Respondent). On or about
24 August 29, 2007, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 January 23, 2008.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code)
2 unless otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
5 8.3, the Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
7 and revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:

9 "The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

13 7. Section 3750 of the Code states:

14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “ . . .

22 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
23 substantially related to the qualifications, functions, or duties of a respiratory care
24 practitioner.

25 “ . . . ”

26 8. Section 3752 of the Code states:

27 “A plea or verdict of guilty or a conviction following a plea of nolo
28 contendere made to a charge of any offense which substantially relates to the

1 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
2 a conviction within the meaning of this article. The board shall order the license
3 suspended or revoked, or may decline to issue a license, when the time for appeal
4 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
5 order granting probation is made suspending the imposition of sentence,
6 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
7 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
8 setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.”

10 9. California Code of Regulations, Title 16, section 1399.370, states:

11 “For the purposes of denial, suspension, or revocation of a license, a crime
12 or act shall be considered to be substantially related to the qualifications, functions
13 or duties of a respiratory care practitioner, if it evidences present or potential
14 unfitness of a licensee to perform the functions authorized by his or her license or
15 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
16 acts shall include but not be limited to those involving the following:

17 “ . . .

18 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

19 “. . . .”

20 COST RECOVERY

21 10. Section 3753.5, subdivision (a) of the Code states:

22 "In any order issued in resolution of a disciplinary proceeding before the
23 board, the board or the administrative law judge may direct any practitioner or
24 applicant found to have committed a violation or violations of law to pay to the
25 board a sum not to exceed the costs of the investigation and prosecution of the
26 case."

27 11. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of

1 prosecution shall include attorney general or other prosecuting attorney fees, expert
2 witness fees, and other administrative, filing, and service fees."

3 12. Section 3753.1, subdivision (a) of the Code states:

4 "An administrative disciplinary decision imposing terms of probation may
5 include, among other things, a requirement that the licensee-probationer pay the
6 monetary costs associated with monitoring the probation."

7 FIRST CAUSE FOR DENIAL OF APPLICATION

8 (Conviction of a Crime)

9 13. Respondent's application is subject to denial under Code sections
10 3750, subdivision (d), 3752, and California Code of Regulations, Title 16, section
11 1399.370, subdivision (b), in conjunction with section 3732, subdivision (b), in that he
12 was convicted of a crime substantially related to the qualifications, functions and duties of
13 a respiratory care practitioner. The circumstances are as follows:

14 A. On or about April 17, 2002, Los Angeles police officers conducted
15 an enforcement stop after observing that Respondent's vehicle did not have a rear
16 license plate. A warrants check of Respondent's vehicle identification number
17 revealed that the vehicle was reported stolen from the Los Angeles Police
18 Department, North Hollywood Division. Respondent was arrested for grand theft
19 auto. When the officers searched Respondent's person and the vehicle, they found
20 various items of evidence including DMV identification cards, numerous bank
21 credit cards, health and Medi-Cal cards, Social Security cards, checks and bank
22 statements. All of these items were in the names of numerous different people.
23 The officers also recovered several cellular telephones, a computer and two hard
24 drives.

25 B. Respondent admitted to the officers that he got the vehicle from a
26 friend who had been arrested, and who told Respondent the vehicle had been
27 stolen. Respondent had been using the vehicle for the past three days. When
28 asked about the items of evidence in the names of other people, Respondent said

1 that he took some of the items from mailboxes and found the rest. He admitted
2 that he used someone's credit card number to purchase one of the cellular
3 telephones. He also admitted that the computer belonged to a "friend" who would
4 not file a police report if he repaired and returned the computer.

5 C. On or about May 30, 2002, in Los Angeles County Superior Court,
6 Information No. PA041009, Respondent was charged with driving a vehicle
7 without the owner's consent, in violation of Vehicle Code section 10851(a), a
8 felony (Counts 1 and 5); receiving/concealing stolen property, in violation of Penal
9 Code section 496(a), a felony (Counts 2, 3, 6, and 8); grand theft, in violation of
10 Penal Code section 487(d), a felony (Count 4); unlawfully using personal identity,
11 in violation of Penal Code section 530.5(a), a felony (Count 7); grand theft of four
12 access cards within twelve months, a violation of Penal Code section 484e(b), a
13 felony (Count 9); and forgery-possession of a blank check, in violation of Penal
14 Code section 475(b), a felony (Count 10).

15 D. On or about June 13, 2002, Respondent was convicted of driving a
16 vehicle without the owner's consent, in violation of Vehicle Code section
17 10851(a), a felony (Count 1). Respondent was placed on probation for five years
18 on a number of terms and conditions, among others: serve 365 days in county jail
19 (with credit for 86 days); pay a restitution fine of \$200.00; make restitution through
20 the probation officer; stay away from the victims; and complete 15 one-hour anti-
21 theft counseling sessions. Respondent was also convicted of grand theft auto, a
22 felony (Count 4), driving a vehicle without the owner's consent, a felony (Count
23 5), and unlawfully using personal identity, a felony (Count 7). He was placed on
24 probation for five years as to Counts 4, 5, and 7. Respondent's sentence as to
25 Counts 4, 5, and 7 ran concurrent with the sentence in Count 1, and all terms and
26 conditions of probation imposed as to Count 1, also applied to Counts 4, 5 and 7.
27 Counts 2, 3, 6, 8, 9, and 10 of the Information were dismissed.

28 E. On or about July 22, 2005, the Court ordered the Information

1 amended to allege Counts 1, 4, 5, and 7 as misdemeanors. On or about July 22,
2 2005, upon full compliance with all terms and conditions of probation, the case
3 was dismissed.

4 SECOND CAUSE FOR DENIAL OF APPLICATION

5 (Commission of a Fraudulent, Dishonest or Corrupt Act)

6 14. Respondent is subject to disciplinary action under section 3750,
7 subdivision (j), of the Code in that he committed a fraudulent, dishonest or corrupt act
8 substantially related to the qualifications, functions, or duties of a respiratory care
9 practitioner. The facts and circumstances, set forth in Paragraph 13 of this Statement of
10 Issues, are incorporated herein by reference.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters
13 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

14 1. Denying the application of Oscar Alexis Cruz for a Respiratory
15 Care Practitioner License;

16 2. Directing Oscar Alexis Cruz to pay the Respiratory Care Board the
17 costs of the investigation and enforcement of this case, and if placed on probation, the
18 costs of probation monitoring; and

19 3. Taking such other and further action as deemed necessary and
20 proper.

21 DATED: May 6, 2008

22
23
24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant